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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/615,314	07/07/2003	Henrik Sonderskov Klint	8627-233	9363

7590 12/15/2004

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EXAMINER

NICOLAS, FREDERICK C

ART UNIT PAPER NUMBER

3754

DATE MAILED: 12/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/615,314

Applicant(s)

KLINT, HENRIK SONDERSKOV

Examiner

Frederick C. Nicolas

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 November 2004.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 35 and 37 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 35 and 37 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☒ Claim(s) 35 and 37 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 07 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☒ Certified copies of the priority documents have been received in Application No. 09/770,417.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10/9/2003
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group IV (Species D: Figures 13-18); claims 35 and 37 in the reply filed on 11/15/2004 is acknowledged.

Drawings

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: element (210). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

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only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claim 37 is rejected under 35 U.S.C. 102(e) as being anticipated by Gerdtz 6,689,120.

Gerdtz discloses a delivery system (col. 4, ll. 29-35), which comprises a delivery device (16) with a distal end (26), a shaft portion (20) with a lumen (32) extending in a longitudinal direction from a proximal end (28) and toward the distal end, a self-expandable prosthesis (38) arranged in a receptacle at the distal end of the delivery device, a pusher member (34) arranged in the lumen of the delivery device to cause relative axial movement of the self-expandable prosthesis with respect to the delivery device, the shaft portion of the delivery device comprising a first helically wound multiple filament row of wires (44).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gerdtz 6,689,120.

Gerdtz discloses a catheter system (col. 4, ll. 29-35), which comprises a catheter (16) having a distal end (26), a body portion (20) having at least one lumen (32) with an inside surface extending through the body portion in longitudinal direction from a proximal end toward the distal end, at least one central member (34), the body portion is

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made of a multiple filament helically wound row of wires (44). Gerdt's lacks that the row of wires has a pitch angle in the range of 26° to 76°.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the wires pitch angle of Gerdt's to have a pitch angle in the range of 26° to 76°, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. As per MPEP 2144.05

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kavteladze et al. 5,643,339, Amann et al. 6,066,155, Morgentaler 5,224,953 and Blanc 5,749,919 disclose other types of delivery device.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick C. Nicolas whose telephone number is (571)-272-4931. The examiner can normally be reached on Monday - Friday from 9:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Y Mar, can be reached on (571)-272-4906. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For

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more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FN

December 10, 2004

A handwritten signature in black ink, appearing to be 'F. Nicolas', followed by the date '12/10/04' written in a similar cursive style.

Frederick C. Nicolas
Patent Examiner
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